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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th April 2006

No. 2985-li/1(B)-10/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th March 2006 in Industrial Dispute Case No. 20 of 1999 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the Managing Director, M/s Eskay Machinery Pvt. Ltd., Bhubaneswar, Mancheswar Industrial Estate, Bhubaneswar and its workman represented through the General Secretary, Eskay Machinery Employees Trade Union, Mancheswar Industrial Estate, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 20 OF 1999

Dated the 25th March 2006

Present:

Sk. Jan Hossain, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between:

The Managing Director, . . . First Party—Management
M/s Eskay Machinery Pvt. Ltd.,
Bhubaneswar, Mancheswar Industrial
Estate, Bhubaneswar.

And

The General Secretary, . . . Second Party—Workman
Eskay Machinery Employees
Trade Union, Mancheswar
Industrial Estate, Bhubaneswar

Appearances :

For the First Party—Management	..	None
For the Second Party—Workman himself	..	Shri Baikuntha Nath Sahoo

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. 7050—li/1 (B)-10/1999-L.E., dated the 24th May 1999 :

“Whether the dismissal of Shri Baikuntha Nath Sahoo, Gr.-II Machinist with effect from the 15th September 1997 by the Management of M/s Eskay Machinery Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar is legal or justified ? If not what relief Shri Sahoo is entitled ?”

2. The brief facts leading to the present dispute by the second party workman may be stated as follows :

The second party workman was initially appointed as a Machinist, Grade-III in the year 1982 on a consolidated salary of Rs. 350 per month and considering his performance subsequently he was promoted to the post of Machinist, Grade-II. It is averred in the claim statement that the second party while working so under the first party with all sincerity, it issued a notice to the second party on some petty allegations and subsequently charged-sheeted him although the allegations levelled against him were all vague and created with an ulterior motive for his participation in the Union activities. According to the second party no enquiry into the allegation was conducted by the first party and the General Manager of the company vide his letter dated the 9th September 1997 asked the second party to offer reply on the proposed punishment of dismissal from service. The second party submitted reply to the said letter of the General Manager but the management without looking to his genuine grievance dismissed him from employment with effect from the 15th September 1997. It is said that the enquiry report relied upon by the first party is a manufactured document and moreover a copy thereof was not supplied to the second party. The action of the first party in dismissing him from service being illegal, the second party has prayed for his reinstatement in service with full back wages.

3. The management filed its written statement asserting therein that the performance of the second party was detrimental to the interest of the company, in as much as, being a Grade-II Machinist he was regularly found wanting in performing his duty for which he was warned verbally several times. When in spite of warning and punishment the workman did not rectify his attitude and continued to do the mistakes, he was charge-sheeted vide letter No. 494, dated the 2nd June 1997. The workman did not submit any reply to the said charge sheet and ultimately the first party decided to conduct a domestic enquiry into the charges. In the enquiry the workman did not participate for which the Enquiry Officer conducted the enquiry *ex parte* and on conclusion submitted his report holding the second party guilty of the charges. Basing on the report of the Enquiry Officer, the disciplinary authority called upon the second party to submit explanation as to why the punishment of dismissal from service shall not be imposed on him. The workman submitted a representation, but the same being found unsatisfactory the disciplinary authority considering the past records of the workman and the proved misconduct in employment, passed orders for his dismissal from service. The management, in the circumstance, has prayed to answer the reference holding the dismissal of the workman from service to be legal and justified.

4. On the basis of the pleadings of the parties, the only issue that was framed in the present reference is as follows :—

ISSUES

“Whether the dismissal of Shri Baikunth Nath Sahoo, Grade-II Machinist with effect from the 15th September 1997 by the Management of M/s Eskay Machinery Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar is legal or justified ? If no to what relief Shri Sahoo is entitled ?”

5. In course of hearing, the management did not appear for which it was set *ex parte* vide order No. 29, dated the 6th November 2002. Subsequently, it moved a petition for setting aside the *ex parte* order on the 7th May 2003, but again it remained absent and did not take any step for which that petition was rejected and the workman was called upon to adduce evidence *ex parte*. The workman examined himself as W.W. No. 1 and got marked Exts. 1 and 2.

6. W.W No. 1, Shri Baikunth Nath Sahoo, in his evidence has stated that in the year 1982 he joined the first party organisation as a Machinist, Grade-II and subsequently promoted to the post of Grade-II. He stated that he was getting regular increment in course of his service. It is in his evidence that as because he was an active member of the Union, he was removed from service on the 15th September 1997 and while doing away with his job the management had not followed the statutory provisions, in as much as, no notice was given to him as per law and no enquiry was held before dismissing him from service. W.W. No. 1 has proved Ext. 1, his salary slip for the month of April 1997 and Ext. 2 the order of annual increment dated the 3rd May 1995.

7. In view of the unchallenged evidence of the second party workman, as aforesaid, there is reason to presume that the second party workman was victimised for his union

activities. Further, in absence of any evidence on record that the first party management had followed the Statutory procedures as laid down under the I.D. Act while removing the second party from service, I answer the reference in favour of the workman and accordingly hold that the dismissal of the workman from service with effect from the 15th September 1997 by the first party management is neither legal nor justified. He is entitled to reinstatement in service with 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN

25-3-2006

Presiding Officer
Industrial Tribunal, Bhubaneswar

Sk. JAN HOSSAIN

25-3-2006

Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government